

PROPOSED AMENDMENTS TO OCTOBER 2010 MEMO ON SECONDARY TRAILS

From John Adornato

The Court's Bear Island decision made clear that changes need to be made to the October 26, 2010 memo sent to Superintendent Ramos by the ORVAC concerning secondary trails. Based on that decision, as explained in the Arnold & Porter memorandum accompanying this proposal, here are the amendments I propose. I will describe the issues by referring to the bullet points in that ORVAC memo as if they were numbered consecutively.

(1) 1st bullet : delete this bullet and replace it with this - -“Secondary trails must be limited to those as defined in the ORV Management Plan (page 34). No substantial change may be made from that definition. Accordingly, secondary trails must be limited to short trails connecting a primary trail and a specific location, such as a designated camp site. A secondary trail may not be one used for recreational purposes such as general off-road driving, hunting or retrieving killed game, wildlife viewing or for long drives through the Preserve, which is the purpose of primary trails.”

(2) 4th bullet: delete. Loops in secondary trails are not permissible.

(3) 5th bullet: delete and replace with this – the following factors as important in assessing whether a trail would be a legitimate secondary trail:

(a) the length of the secondary trail in absolute terms. If the trail does not merely connect a primary trail with a nearby site, but instead extends a considerable distance, it is not an appropriate secondary trail.

(b) the total length of all secondary trails in a unit in relation to the length of all primary trails in the unit. If the total length of all secondary trails is significant in relation to the length of all primary trails in a unit, the “secondary” trails are probably not really intended to be secondary ones.

(c) whether it is likely that the trail will have a minor amount or a significant amount of ORV use. Trails likely to have a greater level of use cannot be considered secondary trails. For this reason, ORVAC (and NPS) will need to evaluate the likely level of use before any final secondary trail designation is made.

(4) 7th bullet: delete first sentence. Add 3d sub-bullet saying “consideration of factors discussed above.”

(5) last bullet: delete and replace with this - -“Trails leading to private property may not be used by anyone other than the property owner, unless separately designated as a secondary trail meeting the factors discussed above.” (see definition of secondary trails in 2000 Plan.)